

# **Exhibit A**

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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE LIBOR-BASED FINANCIAL INSTRUMENTS  
4 ANTITRUST LITIGATION

11 MD 2262 (NRB)

5 -----x

6  
7 New York, N.Y.  
8 July 7, 2020  
12:00 p.m.

9 Before:

10 HON. NAOMI REICE BUCHWALD,

11 District Judge

12 APPEARANCES

13 ZELLE LLP

Attorneys for Plaintiff

14 BY: JAMES R. MARTIN

15 DAVIS POLK & WARDWELL, LLP

Attorneys for Defendants

16 BY: PAUL MISHKIN

ADAM MEHES

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(The Court and all parties appearing telephonically)

THE COURT: Good afternoon. I guess counsel would like to make a record that they are on this call. Perhaps you can all state your name. I'm more concerned with who, if anyone, intends to speak.

MR. MISHKIN: Good afternoon, your Honor. Paul Mishkin from Davis Polk & Wardwell, LLP, for the Bank of America defendants. My colleague, Adam Mehes, is also on the line.

THE COURT: OK.

MR. MARTIN: Your Honor, this is James Martin from Zelle, as requested.

THE COURT: OK. Anybody else who wishes to identify themselves is welcome to.

What I have to say is fairly short, but I wanted to deliver it in person, in a sense.

Anyway, the reason for this conference call relates to the notices of voluntary dismissal and stipulations in connection with those notices. As I read those documents, if I signed the stipulations, they would create appealable judgments. On any issue that was appealed, if my decision on that issue was reversed, as written, the entire case would be live on remand; namely, the combination of the reversal and the additional claims that were withdrawn only without prejudice.

The bottom line is, from my perspective, that this is

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1 an effort to manipulate the final judgment rule and avoid  
2 Rule 54(b) and 1290 to recertification. As such, I don't  
3 intend to sign them.

4 If I have misunderstood the import of these documents,  
5 I will certainly reconsider. I would request, however, that  
6 any submission be in writing. I don't really have anything  
7 else to say, but I don't want to stop anybody else from  
8 speaking.

9 MR. MARTIN: Your Honor, this is James Martin at  
10 Zelle.

11 Did you want me to explain what the purpose of these,  
12 or did you want me to respond to you in writing?

13 THE COURT: I think you need to, in a sense, talk me  
14 off the cliff.

15 MR. MARTIN: OK. I hope I can do that.

16 Until you have said what you just said, it had not  
17 occurred to me that these could even be viewed as an effort to  
18 evade the final judgment rule. For the end course of  
19 dismissals, first of all, we would have to ask --

20 THE COURT: You would have to dismiss the other claims  
21 with prejudice, Mr. Martin. I might accept what you're saying,  
22 but the fact that they all are without prejudice leads to the  
23 precise situation that I have described.

24 MR. MARTIN: OK.

25 THE COURT: Listen, we've had two prior experiences in

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1 this case that have certainly put me -- made me quite weary  
2 when I receive documents like this. OK?

3 I don't mean you, Mr. Martin. I just mean within the  
4 case over the many years that we've all been together. OK?

5 MR. MARTIN: I understand. I do understand. I mean,  
6 that hadn't occurred to me. I'm glad you said it.

7 THE COURT: I think these documents were drafted quite  
8 carefully.

9 MR. MARTIN: Just so you understand, the purpose of  
10 these were to streamline the case for the FDIC to identify  
11 those banks where there are damages, but the value of those  
12 damages as compared to the cost of going forward for them, made  
13 them, you know, to put aside and to streamline the case.

14 THE COURT: Well, there is a very simple way to do  
15 that. That is called stipulations of dismissal, period.

16 I certainly don't want to stop you from doing that.  
17 I've yet not to sign a stipulation of dismissal with prejudice.

18 Very good. Thank you, all.

19 MR. MARTIN: Understood. Thank you.

20 (Adjourned)